

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-12
(June 19, 1995)

Consequences of Renting Properties to Attorneys

Issues

1. May a full-time judge who owns rental properties rent space to attorneys who practice in or are likely to come before the court on which the judge serves?

Answer: No.

2. May a part-time judge who owns rental properties rent space to attorneys who practice in or are likely to come before the court on which the judge serves?

Answer: No, unless the judge complies with the disqualification provisions of the code.

3. May an attorney in private practice who also works as a part-time juvenile court referee continue to serve as a referee in a court where lawyers who rent office space from the referee and her law partner represent accused juveniles?

Answer: No, unless the judge complies with the disqualification provisions of the code.

Facts

This opinion combines two requests from judges who own rental properties that they rent or would like to rent to attorneys. The first request comes from a newly-elected judge who owns several properties in a small, rural area. The upscale offices are suitable for attorneys and other professionals and may be difficult to rent to anyone else.

The second request involves two attorneys who perform a variety of part-time legal and judicial functions in a rural area. The first attorney maintains a private civil practice, performs civil work on special cases as a part-time deputy county attorney, and serves as a part-time juvenile court referee. The second attorney is a private criminal practitioner who has a contract with the county to represent indigent criminal defendants. The two attorneys are partners and own or control office space which is rented to other local attorneys, including the second attorney's brother, who frequently represents juvenile offenders in the juvenile court.

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Discussion

Issue 1

Before answering these questions, we must first consider how the Code of Judicial Conduct applies to part-time judges and juvenile referees. In the Application Section of the code, the following definition appears for the term "judge,"

Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, hearing officer, or referee.

All of the foregoing are judges within the meaning of the code, and all of them are required to comply with the code. There is a significant exception, however, for part-time judges that we will discuss later in this opinion.

One of the most fundamental principles of the code is that judges must be impartial. Canon 2A states that a judge must "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." This concept is reinforced in Canon 3E(1), which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

Canon 3F provides an alternative to automatic disqualification in those circumstances where such action may not be justified or advisable. The canon states, in part, that,

A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings.

Another important provision of the code restricts the business dealings of a judge where such involvement might tend to affect the impartiality of the judge. More specifically, Canon 4D(1)(b) provides that a judge shall not engage in financial and business dealings that "involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves." This canon makes it clear that a full-time judge is precluded from renting property to attorneys who come or are likely to come before the judge. It also suggests that the appropriateness of renting office space to attorneys may depend on the judge's position and the nature of the attorney's practice. It would be permissible, for example, for a justice of the peace to rent an office to an attorney whose practice is restricted to the superior court or a specialized area of the law that would not entail appearances in the justice court. On the other hand, it would be inappropriate for a superior court judge to rent an office to an attorney who regularly appears before the judge.

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Issue 2

Since the next issue in this opinion involves a part-time judge, we deem it appropriate to point out that Section C(1)(b) of the Application Section of the code specifically provides that part-time judges are not required to comply with Canon 4D(1)(b). We are of the opinion, however, that in either of the situations described in the facts a part-time judge would be required to disqualify himself or herself under Canon 3E(1). The judge could thereafter continue to participate in the proceedings only if he or she complies with the provisions of Canon 3F.

Issue 3

There is no doubt that the relationships among the attorneys described in the second part of the facts would create an ethical problem for the part-time referee. If the brother of the referee's partner represents juveniles in the referee's court, then it seems reasonable that opposing counsel would be justified in questioning the referee's impartiality. The referee, after all, would be one of defense counsel's landlords, and the landlord-tenant relationship, coupled with the fact that defense counsel is the brother of the referee's partner, could reasonably give rise to a question of impartiality. The same would hold true for other attorneys who appear in juvenile court while renting space from the referee and her partner.

It is our opinion, therefore, that under these circumstances a referee must disqualify himself or herself in accordance with the provisions of Canon 3E(1). However, the referee could continue to participate in the proceedings as long as he or she complies with the provisions of Canon 3F.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2A, 3E(1), 3F, 4D(1)(b) and Application Section C(1)(b) (1993).